

From: [Smith, Monica](#)
To: [Petersen, Chris](#)
Subject: FW: Sunoco Pipeline: Update on Internal Calls
Date: Thursday, April 03, 2014 12:28:31 PM

From: Salinas, Amy
Sent: Thursday, April 03, 2014 11:01 AM
To: Smith, Monica
Subject: FW: Sunoco Pipeline: Update on Internal Calls

Let me know your availability and when we can talk about the case. It would probably be good to include DOJ on any discussions.

From: Palugod, Paulo (ENRD) [<mailto:Paulo.Palugod@usdoj.gov>]
Sent: Wednesday, April 02, 2014 3:54 PM
To: Palugod, Paulo (ENRD); Brantner, Kelly; Salinas, Amy; Hanson, Robyn (ENRD)
Subject: Sunoco Pipeline: Update on Internal Calls

Hi all,

Kelly and I talked this morning, and Amy and I spoke briefly on Friday. I just wanted to give you update of our discussions. Kelly, let us know if there is anything I missed.

Everyone please feel free to weigh in on anything below. I have highlighted your names where I have specific questions for each of you or where someone has been kind enough to follow-up on an issue. Where no one is designated, presume I am following up, but it felt odd to include my name in third person (even though I've done it before). This is, of course, a team effort so please let me know where you have concerns or comments.

1. **Timing:** Please hold **Wednesday, April 9th at 10 am** for a teleconference with Sunoco. I expect this to take a few hours, and wanted to start early to give us the afternoon to reconvene after lunch in case we were making progress and just needed to revisit. Our SOL is estimated to run in August 2014. If we attempt to resolve this in time for the close of FY 2014, then we would need to lodge a CD by July 1. That gives us a little less than 3 months to wrap up. If we do not expect resolution by mid-May, then we should seek a tolling agreement. If we do not expect a tolling agreement, then we would seek approval of a complaint by June 1, because then we will be a little more than 2 months from our SOL. We will then target to lodge a CD in early FY 2015.
 - a. At this point, timing rests on outlining IR terms with enough specificity, getting agreement from Sunoco on the IR terms so we can put it into a draft CD, and receiving and agreeing to a counteroffer on the penalty demand, which at this point we have not yet received. I am calling Kevin Dunleavy today to give him an update on some of these issues.



9559543

- b. Also, in an effort to avoid holding up lodging a CD, we should seek the audit for after the CD is lodged. Given that, we may need to include provisions in the CD for selection of an auditor and a mechanism for dispute resolution for what recommendations to implement from the audit.
- 2. Expert: I have spoken with both Amy and Kelly about enlisting a technical person to assist us with negotiations. I think it would be good to have someone on the calls with Sunoco and to have someone available to ask technical questions to as we develop our IR proposal.
Amy, is Monica Smith available to join us on the call on April 9th? After that, perhaps we can decide with some guidance from Monica whether we will need to enlist a technical expert to assist us. **Kelly** is looking into whether there are technical contractors available to her on retainer at HQ and I am looking into whether there are technical experts available to ENRD (Kelly suggested George Fox who is working on Magellan). **Robyn**, I know I had suggested looking to the OEM folks overseeing the SPCC program, but after speaking with Kelly, they are probably not a good option for this role, which I can discuss with you.
- 3. Scope of Causation Review:
 - a. Standard of Review: PHMSA, SPCC, or Industry? **Kelly** is going to talk to Sheryl in her office about what standard might be appropriate. At minimum, compliance with PHMSA regulations seems appropriate, but where they are compliant, and yet the spills occurred anyway, we want to ensure that the changes they make address the actual causes of the spill. Perhaps compliance with SPCC regs as if it were under that jurisdiction is appropriate since it is a breakout station, similar to the nature of the storage tanks that are governed by those regs. However, we have heard Sunoco push back on being under the jurisdiction/oversight of two regulators during the monitoring period, so perhaps this is not the best standard or best way to frame the standard.
 - b. Access for Review: We want this review to be comprehensive, to include an investigation of the documents/review that Sunoco has already conducted, but also access to facilities and interviews of personnel.
 - c. Review of Internal vs. External Corrosion: In our proposal, we should seek a general causation review, but require specifically that the auditor look at ***internal corrosion*** among the causes it reviews, because it has been identified as a cause in Sunoco's 308 responses. Part of why I think we need to keep this more general is that Sunoco has been trying to limit the "primary cause" of the spill (their words) to the dead leg of the pipeline, rather than corrosion. By keeping it general, I think we avoid back and forth between us about whether it was corrosion or the dead leg that caused the spill. Rather, the auditor will make the determination and we will both accept the findings. To that end, I suggest that the "scope" of the review be that the auditor look at all of the causes, where Kevin has hinted that they are looking to isolate a "primary cause", at least with respect to Cromwell.

- d. Risk Management Plan: At Kelly's recommendation, we are going to seek delivery of the Risk Management Plan to the auditor during its causation review.
- e. Timing of CD lodging, auditor review, and implementation: Given our short time frame before our SOL runs, we should propose that the causation review be completed after lodging so that we can lodge and enter a CD before the SOL. We will include in our proposal/CD a mechanism for accepting/rejecting recommendations from the auditor by both parties. We can offer a timeline similar to the following, and suggest that if they want the opportunity to accept/reject recommendations prior to lodging of the CD, then we will need to do it in shorter timelines. Here is an example timeline, but I'm going to look to other cases, including BP Curtis Bay for a model:
 - i. Sunoco must select auditor in 30 days from entry of CD
 - ii. Sunoco must contract an auditor in 30 days from selection
 - iii. Auditor must perform audit of causation in 90 days and submit written report to EPA on findings (we can flesh out requirements in another paragraph)
 - iv. Sunoco must respond within 30/45/60 days agreeing to implement, or providing an explanation why they cannot
 - v. EPA must respond in 30/45/60 days with agreement, or explanation of what recommendations Sunoco must implement
 - vi. Parties must reach agreement in 30/45/60 days of recommendations that must be implemented. If agreement cannot be reached, then parties submit to dispute resolution and accept the third-party/judicial findings on what must be implemented.
- f. Monitoring Period: Sunoco will submit to monitoring for 3 years from the date which they begin implementation, including reports every 6 months and a final report before the CD is terminated. (***Or should this be the date which they complete implementation?*** Kelly, do you have thoughts?) Three years of monitoring has been the minimum for other similar cases in EPA HQ. We will want to know any changes in policies and procedures that affect the changes that have been made under this CD and any new spills that have occurred ***at the two facilities*** (Amy/Robyn: Do you agree that we should limit reporting to spills at these two facilities or should it include spills across the company?). Kelly is thinking more about how we construct the reporting requirements so that we can limit the monitoring period so it is not overly burdensome and so that it ties back to the changes that they will make as a result of the review.
 - i. Other Spills: Kelly is going to get a report on the spills that have occurred at Sunoco facilities since the first spill occurred to the present date so that we can get an idea of their history.

Thanks,
Paulo

Paulo Palugod
RFK 2607: (202) 514-2766
PHB 8033: (202) 514-3581
Blackberry: (202) 305-5626

From: Palugod, Paulo (ENRD)
Sent: Sunday, March 16, 2014 2:38 PM
To: 'Brantner, Kelly'; 'Salinas, Amy'
Cc: Hanson, Robyn (ENRD)
Subject: Sunoco Pipeline: Update from Phone Call

Dear Team,

Wanted to give you an update on our call with Kevin Dunleavy at Sunoco on Friday afternoon.

1. **Lack of clarity on the standard** to which the auditor would compare Sunoco's program – PHMSA regulations or "best practices"
 - a. Leak Detection and Warning System: They seem to be comfortable with the original proposal that required compliance with PHMSA regulations. I asked about the "operational excellence" standard and they said that they agreed to it before, but that we hadn't fleshed out what it meant.
 - b. Corrosion/Causation of Spill: They seem to be comfortable with compliance with PHMSA regulations. They are concerned that if it was some other standard, there is too much ambiguity. Robyn suggested that we discuss with you (EPA) what the standard might be. Should we use standards that SPCC would use? Should we find someone in PHMSA? Are there things PHMSA regulations wouldn't cover with respect to causation?
2. **Limitations of Causation Audit**: Will the audit be limited to an analysis of the review of what Sunoco has already done to determine the cause? Will it simply be a review of Sunoco's records? Will we need to test the line or other physical assets? Will we need to interview employees? Do we start with Sunoco's review and then to the extent that the auditor deems it incomplete, will it run its own (non-duplicative) review? If insufficient, will the auditor have to run the same reviews that Sunoco has already done?
3. **Monitoring Period**: Sunoco says that having to report to 2 agencies would be "continuing jurisdiction" (PHMSA and EPA).
 - a. Issues to consider: What will be reported in the monitoring period? Implementation of recommendations? Anything that undoes or runs counter to implementation of the recommendations in the audit? Any new discharges that are similar to this spill? Anything else? How broad or narrow do we make this?
 - b. Their main concern was the length of the monitoring period. We asked what would be reasonable to them, and he didn't have an answer. I told them that this 3 year

monitoring period is typical of what we are requiring of other companies in similar agreements. Kelly, can you direct me to settlements or maybe just actions with injunctive relief that require a three year monitoring period?

- c. Regarding future discharges, if all we want is to be included whenever a spill happens, he said they can add EPA to a list that gets reports on the discharges.
4. **Distinction between internal corrosion and external corrosion:** I know we haven't discussed this yet, probably because in their 308 responses they only identified internal corrosion as the cause of the spill, but do you have any thoughts about making this distinction? I'm not totally sure where they were going with this – whether they wanted to limit the causation review by the auditor or whether they wanted to limit any injunctive relief.
5. **Risk Management Plan:** We reminded them that we have asked them to turn over their Risk Management Plan. Kevin said that PHMSA recently did a review. We reminded them that we didn't need to review the content of the RMP for actual compliance with the regs, but assurance that they had one. Additionally, we said we want to review as a potential cause of the spill to the extent that they did not properly implement the risk management plan.
6. **Sunoco Pipeline vs. Sunoco Logistics:** We reminded them that for purposes of including the appropriate entity in the Complaint/CD, we wanted to get information about which entity(ies) controls direction of assets/facilities and employees. We reminded him that in our discussions, they said Sunoco Pipeline managed and controlled the assets/facilities, and Sunoco Logistics employed the people that operated them. We didn't ask which entity puts together the risk management plan and other procedures, but can raise later.
7. **Inspection of Tank 1408 at Barbers Hill Facility:** We saw in Jessi's notes that this tank was scheduled for inspection in 2014. We asked to see what the status was.

Thanks,
Paulo

Paulo Palugod
RFK 2607: (202) 514-2766
PHB 8033: (202) 514-3581
Blackberry: (202) 305-5626